APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21766

BROWN & ROOT, INC.,
Appellant
versus
AMERICAN HOME ASSURANCE COMPANY,
Appellee

Appeal from the United States District Court for the Southern District of Texas

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(November 23, 1965)

Before BROWN and COLEMAN, Circuit Judges, and MORGAN, District Judge.

BROWN, Circuit Judge: This case concerns the liability of a tug for loss and damage to deck-loaded cargo when the barge went aground on March 26, 1956, nearly a decade ago. As such, the cast of nautical characters is a replica of our earlier decision involving the Tug R. A. Turrentine,

the Barge LTC 6 and the Magnet Cove interests.[1] *The R. A. Turrentine v. American Home Assur. Co.*,[2] 5 Cir., 1960, 279 F.2d 811, 1960 AMC 1429, cert. denied, 364 U.S. 914, 81 S.Ct. 278, 5 L.Ed.2d. 28, rehearing denied, 364 U.S. 944, 81 S.Ct. 463, 5 L.Ed.2d 376.

Indeed, so the Tower[3] argues, this identity as to names, the underlying relation of the parties, the nature of the towing/transportation agreement was so stressed by cargo claimants that the trial Judge, perhaps mesmerized by this strange coincidence, was led to apply a sort of res judicata-collateral estoppel even though the operative occurrences —here a grounding in a channel and in the previous case a capsizing in a bay—were utterly different, calling for quite distinct legal theories of responsibility. This leads the Tower to attack the trial Court's finding of negligent grounding as clearly erroneous because not supported on the facts of this record. If this ground fails, it repeats its contentions unsuccessfully urged in the prior case that under the arrangement the Tug Owner was engaged in transportation, not mere towage, enabling it, first, to become the beneficiary of a bill of lading contract and, then, as a private carrier under it, to claim the benefit of the Harter Act and its error-in-navigation exemption, 46 USCA

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[1] Magnet Cove Barium Corp. (Shipper-Consignee); Magcobar, Inc. (cargo-owner); and Magco Towing Co., Inc. (the nominal carrier issuing the bill of lading).

[2] Although an earlier case as it hit the Courts and books, this involved a subsequent incident in June 1956 occurring in Corpus Christi Bay. There an attempt to shift the tug ahead of the barge after a towing cable parted resulted in the barge listing and the cargo going overboard.

[3] Brown & Root, Inc. was the owner of the Tug R. E. Turrentine. We use the term "Tower" in a conventional operational sense with no overtones as to the status of such "Tower" as one engaged in transportation of the cargo rather than simple towage. This issue is discussed later.

§192. By independent review of the first attack and stare decisis as to the second, we reject them and affirm.

We start out by agreeing fully with the Tower that under no circumstances may the earlier decision have any bearing on the Tug's responsibility for the dissimilar occurrence of March 26, 1956, here in suit. Apart from the Harter Act contentions arising out of the basic contractual arrangement, the Tug's legal liability turns on whether the Tug was negligent in respect of the grounding at this time, place and on this record, not the former one. We may agree also that the evidence is thin, but thin as it may be, it is thick enough considering our separate role. *Cf. Hughes Tool Co. v. Varel Mfg. Co.*, 5 Cir., 1964, 336 F.2d 61, 62.

The Barge LTC 6 with a 900-ton deckload of drilling mud, much in large steel containers and the remainder in pallet-stacked bags, departed from Brownsville bound for Corpus Christi by the Intracoastal Canal. The Tug was made up astern to push the Barge. All went well until about 10:00 p.m. The wind had been from the north, but then shifted to the northeast. As the tow, northbound, passed the channel mile post 620 and was between U.S. Engineer Nos. 306 and 307, the port forward corner of the Barge went aground on or near the left (upbound) channel bank. Either this or the Tug's efforts to slide off the strand, or a combination of both, caused the deck cargo to shift, listing the Barge more sharply to starboard with 90% of the cargo sliding into the canal.

According to the Tug's Captain (Savoy) testimony both in pretrial deposition and on his later court appearance, the Barge struck an unmarked, unknown shoal within the defined limits of the navigable channel. The shoal presumably had been formed through surface drainage of

soil off the nearby cut banks. On this hypothesis, the Tower could then argue forcibly those cases which exonerate the Tug from striking an unknown, unmarked object in the channel. *Exner Sand & Gravel Corp. v. Gallagher Bros. Sand & Gravel Corp.*, 2 Cir., 1946, 157 F.2d 291, 1946 AMC 1449; *The I.L.I. No. 103*, 2 Cir., 1939, 104 F.2d 650, 1939 AMC 927; *The Arlington*, 2 Cir., 1927, 19 F.2d 285, 1927 AMC 900. This theory got a substantial boost from an unexpected quarter. A marine surveyor, Dierlam, retained by and acting for the cargo underwriter (who is the subrogated libellant here) went to the scene of the casualty. His initial formal report to his principals stated that the "barge was found to be grounded on a silt or sand formation which, apparently, had built up on the edge of the west side of the channel bank from land drainage." The shipper-cargo owners in submitting proof of loss to the underwriter (libellant-appellee here) described the occurrence in similar terms. The "* * * barge LTC #6 * * * was stranded at about mile 620 in between markers 306 and 307, intracoastal waterway, the barge struck sand bar on the left side of the canal and went hard aground. * * *." But by trial time Surveyor Dierlam had changed his mind, primarily as a result of a study of the U.S. Engineer cross sections for stations 306 through 307. These cross sections (at 50-foot intervals) were prepared from soundings in August 1956, some four to five months after the stranding during which time it was undisputed no dredging had been done. Contrary to Tower's claim, these showed no shoal out into the defined channel limits.

Without a doubt the actions and reports of the Surveyor Dierlam, made by one whose job was to investigate and *report*, constituted admissions to prove the truth of the

declarations made.[4] But except for those specialized, rare assertions characterized as judicial admissions, a party is entitled to explain an admission and even to retract it. When that is done, the factual evaluation of the admission *vis-a-vis* explanation, retraction, or repudiation, is for the trier of the fact.

In that process many things are pulling in different directions here. Thus, for example, the Tower rightly emphasizes the interval nature of cross section soundings and the inability of them to portray accurately in detail the whole contour of the channel limits and bottom. This infirmity is augmented because fixing of the location of the casualty in terms of stations 306-307 is at best an estimate. But most significant, Surveyor Dierlam's job was to ascertain cause, both in an operational and legal sense, and after full opportunity to make full inquiry on the scene, he accepted without reservation the Tug's story. On the other hand, strong factors offset or overcome these considerations. One, of course, is the burden resting on the Tug to come forward with a plausible explanation for having stranded during calm weather on a clear night in a waterway having over 150 feet of navigable channel. *Bisso v. Waterways Transp. Co.*, 5 Cir., 1956, 235 F.2d 741, 744, 1956 AMC 1760, 1763. The Captain was, to be sure, adamant in his testimonial insistence that he was not out of the channel. But the trier was entitled to make something more out of his statements given to Surveyor Dierlam on the spot. After first stating that the Barge "nosed

[4] See, e.g., Compagnie De Navigation Fraissinet & Cyprien Fabre, S.A. v. Mondial United Corp., 5 Cir., 1963, 316 F.2d 163, 171 n.10; Employers Mut. Cas. Co. v. Mosqueda, 5 Cir., 1963, 317 F.2d 609, 612-13; Local 787, Int'l Union of Elec. & Mach. Workers v. Collins Radio Co., 5 Cir., 1963, 317 F.2d 214, 219 n.10; Cox v. Esso Shipping Co., 5 Cir., 1957, 247 F.2d 629, 632-34, 1957 AMC 1927. See generally McCormick, Evidence §244 (1954).

close enough to the channel bank that she struck a sand bar on the lefthand side (going north)," the Captain spoke as the voice of the Tower[5] in expressing the fact-conclusion "I believe this casualty occurred because there were insufficient channel lites to help me keep in the center of the channel." The Captain insisted, of course, that reference to "the lefthand side" meant within the channel limits. But when asked on the trial to estimate how far the Tow was from the center of the channel when the port corner of the Barge touched ground, he could give no estimate. And critical as it was to exculpate a Tow which grounded in calm, clear conditions in a channel of abundant depth and width, *Bisso v. Waterways Transp. Co., supra,* there was a complete failure to make any sounding of any kind at the scene of the casualty while Tug, Barge, Captain, and Surveyor were all there. The trier of the fact was entitled to conclude that the Captain tipped off the real reason for the grounding in his complaint about channel lights. That statement revealed that in the Captain's own mind he must have strayed too far from the center. It did not reveal—nor could it—how the existence of channel lights could have revealed a shoal which was completely submerged and wholly undisclosed. The point of this is not, as asserted by Cargo, that the failure of the Tow to navigate in the center of the channel was an independent ground of negligence. Rather, it is that the farther the tow was from the center, the closer it was to the edge of the defined channel, the exact location of which was difficult, if not impossible, to locate on the surface of the waterway. The permissibility of this inference is cumulatively supported by ample evidence of

[5] Fall v. Esso Standard Oil Co., 5 Cir., 1961, 297 F.2d 411, 417, 1962 AMC 951, 959, cert. denied, 1962, 371 U.S. 814, 83 S.Ct. 24, 9 L.Ed.2d 55; June T., Inc. v. King, 5 Cir., 1961, 290 F.2d 404, 406, 1961 AMC 1431, 1433.

other fault, particularly with respect to the failure to maintain a proper lookout considering the high deckload.

Affirming, as we do, the finding of negligent towage, the alternate Harter Act error-in-navigation defense, based on identical facts between identical parties, involves the identical question disposed of in our former decision.[6] The Tower urges that we reconsider.

In this undertaking which perhaps reckons with a mixture of the law-of-the-case principle, *Lincoln Nat'l Life Ins. Co. v. Roosth*, 5 Cir., 1962, 306 F.2d 110 (en banc), and stare decisis, the Tower with a good deal of basis throws added doubt on the correctness of our still earlier decision in *Mississippi Valley Barge Line Co. v. T. L. James & Co.*, 5 Cir., 1957, 244 F.2d 263, 1957 AMC 1647, cert. denied, 355 U.S. 871, 78 S.Ct. 121, 2 L.Ed.2d 76, on which *The R. A. Turrentine* was based. To the doubts generated by Chief Judge Tuttle's special concurrence, 279 F.2d 811, 815, the Tower adds supposedly contrary results reached in these cases: *Continental Grain Co. v. American Commercial Barge Line Co.*, 7 Cir., 1964, 332 F.2d 26, 1964 AMC 1830; *Allied Chemical Corp. v. Gulf Atlantic Towing Corp.*, E.D.Va., 1964, 1965 AMC 776; *Pure Oil Co. v. M/V CARIBBEAN*, W.D. La., 1964, 235 F.Supp. 299. And to these we think the action of the Supreme Court in *Southwestern Sugar & Molasses*[7] saps pretty generally whatever vitality remained in *T. L. James* so far as the status of carrier

[6] The R. A. Turrentine v. American Home Assur. Co., 5 Cir., 1960, 279 F.2d 811, 1960 AMC 1429, cert. denied, 364 U.S. 914, 81 S. Ct. 278, 5 L.Ed.2d 28, rehearing denied, 364 U.S. 944, 81 S.Ct. 463, 5 L.Ed.2d 376.

[7] Southwestern Sugar & Molasses Co. v. River Terminals Corp., 1959, 360 U.S. 411, 79 S.Ct. 1210, 3 L.Ed.2d 1334, 1959 AMC 1631, affirming in part and remanding in part, 5 Cir., 1958, 253 F.2d 922, 1958 AMC 534. For opinion or remand see 5 Cir., 1960, 274 F.2d 36, 1960 AMC 2064.

versus tower turned on independent ownership of the tug and of the barge being physically towed. In each case the barge was shipper-owned and the ICC tariffs of these regulated certificated carriers treated the resulting cargo liabilities specially. In *T. L. James* we held, in effect, such exoneration to be void as a matter of law. In *Southwestern Sugar & Molasses*, the Supreme Court affirmed our decision[8] that validity was a matter first to be determind by the ICC under the primary jurisdiction doctrine.

But to recognize that the signal from *T. L. James* is weak does not carry the day. At the oustet, this loose, informal, oral arrangement revealed by the facts of these two identical records does not compel a holding by the trier of fact, *cf. F.R.Civ.P.* 52(a), that the Tower undertook to accept and perform all of those obligations and responsibilities characterizing a carrier,[9] i.e., one engaged in the transportation of cargo as distinguished from the more limited role of supplying towage.

More important, even making the double assumption that the arrangement gave Tower the status of a carrier and that it was therefore an implied party to the bill of lading issued by Magco Towing Company is insufficient. The Harter Act is not self-executing. For private carriage it must be invoked and admittedly that was done here, if at all, through incorporation by reference. We adhere to our former holding that the incorporating condition "if this is a rail or rail-water shipment" was not met by an *all*-water movement. See 279 F.2d 811, 814. This is but an application of the familiar principle that in the absence of a contrary contractual provision, the law holds one en-

[8] 253 F.2d 922, 1958 AMC 1534.

[9] Ownership of transportation facilities is seldom a decisive factor, cf. Agricultural Transp. Ass'n v. King, 5 Cir., 1965, 349 F.2d 873.

gaged in private carriage to the traditional standard of due care. No paper—no contract—to which Tower was a formal or implied party undertook to alter this standard. It, first, failed somehow to make itself a third-party beneficiary to Magco Towing Company's contract. More than that, Magco Towing Company's contract did not prescribe the less exacting standard as such. It only incorporated the Uniform Bill of Lading—a document designed for ICC certificated rail carriers and their liabilities for shipments moving partly by water. 49 USCA §1(1)(a).

The Tower failed to establish to the satisfaction of the trier of the fact that it had in fact invoked the Harter Act in the contractual arrangement between the parties. The Harter Act defense therefore fails.

This leaves the tag-end attack on the allowance of surveyor's fees and expenses to Surveyor Dierlam in the amount of $841.57. Although the record is technically deficient perhaps in giving this item the true status of a subrogation claim since the Libellant-Appellee paid it direct to Surveyor Dierlam, we think in view of the equitable nature of the doctrine of subrogation that this deficiency can be remedied on the remand required in connection with this small part of the claim. The Tower is correct that in so far as Surveyor Dierlam was acting solely in behalf of the Carrier Underwriter's interest, the fee in connection with a cargo claim is not allowable.[10] But to the extent that Surveyor Dierlam's actions and expenses were reasonably attributable to the action of a prudent uninsured

[10] Tower urges these cases: Galveston Towing Co. v. Cuban S.S. Co., 5 Cir., 1912, 195 Fed. 711, 714; The Venus, S.D.N.Y., 1883, 17 Fed. 925, 928; The Benjamin A. Van Brunt, E.D.Pa., 1925, 3 F.2d 655, 658; The Priscilla, 1 Cir., 1932, 55 F.2d 32, 37, 1932 AMC 334, 335.

cargo owner in the care, protection, and salvage of the cargo lost or damaged, it certainly ought to be allowed.[11]

This brings to mind what we said in *Bros Inc. v. W. E. Grace Mfg. Co.*, 5 Cir., 1963, 320 F.2d 594, 597: "Hearkening as we should to the principle epitomized in Justice Story's apothegm that 'It is for the public interest and policy to make an end to litigation * * *' so that '* * * suits may not be immortal, while men are mortal,' * * * we nonetheless conclude that before the curtain falls on this juridical drama, there must be another act." Now this old, old case must go back for yet another round on this very, very limited issue. Indeed, judging from the past, it might be rounds, not round.[12]

But hastening the day when, as it "must to all living things, an end comes to this case * * *,"[13] we expressly affirm the District Court's allowance of all items of damages —except the surveyor's fee—with interest. As to the surveyor's fee, the case is reversed and remanded for further, consistent proceedings and for the entry of a proper decree with interest

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

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[11] Cargo urges these cases: The James McWilliams, 2 Cir., 1930, 42 F.2d 130, 1930 AMC 1055; Cargill, Inc. v. The Frank A. Lowery, N.D.N.Y., 1957, 159 F.Supp. 133, 1957 AMC 1563, aff'd, 2 Cir., 1958, 251 F.2d 845, 1958 AMC 842, cert. denied, 356 U.S. 951, 78 S.Ct. 917, 2 L.Ed.2d 845; The Raleigh, D.Md., 1943, 50 F.Supp. 961, 1943 AMC 1016; The Feltre, D.Ore., 1939, 1939 AMC 1173; Mulqueen v. Hedger Transp. Co., S.D.N.Y., 1933, 1935 AMC 1247, 1248.

[12] After our remand in **The R. A. Turrentine** to determine whether the Tug should be compensated for hire, we again had the case on the Tower's unsuccessful appeal from the District Court's allowance of interest from date of the decree. Brown & Root, Inc. v. American Home Assur. Co., 5 Cir., 1963, 321 F.2d 814, 1964 AMC 69.

[13] Bros Inc. v. W. E. Grace Mfg. Co., 5 Cir., 1965, . . .F.2d . . ., . . . [No. 21470, decided September 14, 1965].

APPENDIX II

MEMORANDUM OPINION:

(Filed October 26, 1962)

(Caption Omitted)

On or about March 28, 1956, while the Tug R. A. TURRENTINE was towing Barge LTC No. 6, the tug ran aground in the Intracoastal Canal and the barge listed at an angle of about 45 degrees, resulting in the shifting of the cargo belonging to Libelant which consisted of drilling mud that was of barite ore and was dissolvable and did dissolve as it went into the water. The cargo was in metal cans or containers and also in paper bags.

Libelant is the insurance carrier for Magcobar, Inc., Magnet Cove Barium Corporation, and Magco Towing Company, and became subrogated to this action to the extent of such payment against Brown & Root, Inc., and its Tug R. A. TURRENTINE. Libelant alleges various acts of negligence on the part of the crew of the tug, and particularly in not maintaining any lookout or a proper lookout, and in causing said Barge LTC No. 6 to strand outside the navigable channel of the Gulf Intracoastal Waterways and in negligently maneuvering in an endeavor to free Barge LTC No. 6 from her strand as to cause said barge to list to her starboard at an angle of about 45 degrees and dump the large part of the cargo of said barge.

Respondents answer and have a number of defenses, all of which, except two, have been decided contrary to Respondents' theories in a companion case between the same parties involving the same tug and also involving a similar shipment except for the fact that the other shipment was contained entirely in paper sacks, the same loss of cargo occurring also in the same channel. The companion case

was filed in the Corpus Christi Division and was decided by Judge James V. Allred in written opinion dated December 30, 1958. Thereafter, on appeal, the 5th Circuit affirmed Judge Allred in 279 F.2d 811. Thereafter, a petition was filed in the Corpus Christi case for a writ of certiorari to the Supreme Court of the United States which was denied as reported in 364 U.S. 914, and a petition for rehearing on said matter was denied by the United States Supreme Court reported in 364 U.S. 944.

In said opinion the contractual and statutory defenses listed in Respondents' answer were fully and finally decided adversely to the contentions of the Respondents herein. The Corpus Christi case decided that there was no provision for giving to Brown & Root the benefit of any insurance procured by Libelant's assureds, and it further held in that case that the defenses afforded by the Harter Act were not available to Brown & Root under the contract of towage or any other contractual agreement between Brown & Root and Libelant's assureds.

It further held that the contract of Brown & Root was for towage and not for affreightment, and this being so, it could not as a carrier claim the benefit of the insurance.

The main difference in the Corpus Christi case and the instant case is that the Respondents claim that the barge was negligently loaded. On this point Judge Brown in the case of *Bisso v. Waterways Transportation Co.*, 235 F.2d 741, held that in the case of the stranding of a vessel, resulting in loss of cargo, that the barge was overloaded by the Libelants. That if this overloading did occur, it was the duty of the pilot in charge of the tow boat to refuse to accept the cargo, but if he did accept it, as was the case here, and casualty resulted, then the burden is on the tug to show at least a reasonable excuse for the accident other than its own negligence. Failing to do this, the Libelant

was entitled to a decree for damages. Here respondent did so fail.

The other question of difference from the Corpus Christi case and the instant case was an attempt to show an oral agreement which would be in the nature of an act for deceit and estoppel. Suffice to say, in my opinion, the Respondents completely failed to make any such proof.

I therefore hold as a matter of law that the tow was negligent in its handling of the barge and that such negligence was the direct and proximate cause of the stranding and the resulting damages to the cargo.

I further find that this court has jurisdiction over the parties and the subject matter of this suit.

I further find that the casualty did not result from any Act of God or inevitable accident and, further that the casualty was not attributable either to overloading or improper loading, and if it was improperly loaded, such a defect was so obvious that the tow should have discovered it before the voyage began.

And that, therefore, the tug is held solely at fault for the accident and resulting damages, including the necessary & reasonable cost of marine surveyor's fees in the sum of $841.57, for costs of court and for damages to cargo in the sum of $31,430.49, plus interest from the date of the casualty, and that the Respondent Brown & Root take nothing by its Impleaded Petition against Impleaded Respondents.

The above will constitute the findings of fact and conclusions of law in this case.

Clerk will notify Counsel.

/s/ ALLEN B. HANNAY
United States District Judge

APPENDIX III

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21766

BROWN & ROOT, INC.,
Appellant

versus

AMERICAN HOME ASSURANCE COMPANY,
Appellee

Appeal from the United States District Court for the Southern District of Texas.

(December 29, 1965)

ON PETITION FOR REHEARING

Before BROWN and COLEMAN, Circuit Judges, and MORGAN, District Judge.

PER CURIAM:

It is ORDERED that the Petition for Rehearing filed in the above entitled and numbered cause be, and the same is, hereby DENIED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1965

No. 21,766

D. C. Docket No. Adm. 1472
BROWN & ROOT, INC., Appellant,
versus
AMERICAN HOME ASURANCE COMPANY,
Appellee.

Appeal from the United States District Court for the Southern District of Texas.

Before BROWN and COLEMAN, Circuit Judges, and MORGAN, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of

the said District Court in this cause be, and the same is hereby, affirmed in part, and reversed in part in accordance with the opinion of this Court; and that this cause be, and it is hereby remanded to the said District Court in accordance with said opinion;

It is further ordered and adjudged that the appellant, Brown & Root, Inc., be condemned to pay 90% of the costs of this cause in this Court, and appellee, American Home Assurance Company, be condemned to pay 10% of said costs, for which execution may be issued out of the said District Court.

November 23, 1965

Issued as Mandate: JAN. 6, 1966

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THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

APPENDIX IV

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western and Illinois Freight Classifications in effect on the date hereof, if this is a rail or rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

CARRIER'S No. _____

SHIPPER'S No. _____

DATE SHIPPED	CAR OR VEHICLE INITIALS & NO.

At

From **MAGNET COVE BARIUM CORPORATION**

CONSIGNED TO

(Mail or street address of consignee—For purposes of notification only)

DESTINATION

CARRIER

ROUTING

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid)

Charges Advanced:

$

Number Packages	Package Size		NUMBER OF UNITS	PER*	*ROD. CODE	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Sub to Cor.)	Class or Rate	Ck. Col.

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

The Fibre Boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Consolidated Freight Classification.

"If Intrastate consignment, then the provisions hereof shall be subject to the laws of Texas; all provisions not expressly restricted by such laws shall be applicable to this shipment."

MAGNET COVE BARIUM CORPORATION, Shipper,

_____ Agent

Per _____

Per _____

Permanent postoffice address of shipper, HOUSTON, TEXAS, U. S. A.

APPENDIX V

UNIFORM DOMESTIC STRAIGHT BILL OF LADING

CONTRACT TERMS AND CONDITIONS

. . .

Sec. 9. (a) If all or part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, as well as the following subdivisions of this section; and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.